

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**
Caption in Compliance with D.N.J. LBR 9004-1(a)

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In re:

EVERGREEN I ASSOCIATES LLC,

Debtors.¹

Chapter 11

Case No. 21-17116 (CMG)
(Joint Administration Requested)

Judge: Christine M. Gravelle

Re: D.I. 26

**OBJECTION OF 710 ROUTE 38 ABL I HOLDINGS, LLC TO THE
APPLICATION FOR ORDER SHORTENING TIME FOR NOTICE OF HEARING ON
DEBTORS' (I) RESPONSE TO MOTION OF 710 ROUTE 38 ABL I HOLDINGS, LLC
FOR ENTRY OF AN ORDER EXCUSING RECEIVER FROM COMPLYING WITH
CUSTODIAL TURNOVER REQUIREMENTS AND KEEPING RECEIVER IN
POSSESSION AND CONTROL OF THE MORTGAGED PREMISES AND RENTS
PURSUANT TO 11 U.S.C. § 543(D) AND (II) CROSS-MOTION FOR ENTRY OF AN
ALTERNATIVE FORM OF ORDER PURSUANT TO 11 U.S.C. § 543 (D.I. 26)**

¹ The Debtors in these chapter 11 cases and the last four digits of the Debtors' taxpayer identification numbers are as follows: Evergreen I Associates, LLC (5258), Evergreen II Associates, LLC (5300), Evergreen III Associates, LLC (5332), and Evergreen Plaza Associates, LLC (5141).

Secured lender and judgment creditor, 710 Route 38 ABL I Holdings, LLC (“Lender”),² by and through its undersigned counsel, hereby objects (this “Objection”) to the *Application for Order Shortening Time for Notice of Hearing on Debtors’ (I) Response to Motion of 710 Route 38 ABL I Holdings, LLC for Entry of an Order Excusing Receiver from Complying with Custodial Turnover Requirements and Keeping Receiver in Possession and Control of the Mortgaged Premises and Rents Pursuant to 11 U.S.C. § 543(D) and (II) Cross-Motion for Entry of an Alternative Form of Order Pursuant to 11 U.S.C. § 543 (D.I. 26)* (the “Application to Shorten”), filed by the above-captioned debtors (collectively, the “Debtors”) on September 20, 2021, and in support of its Objection, Lender respectfully states as follows:

1. By the Application to Shorten, the Debtors seek a hearing on the Response and Cross-Motion (as defined in the Application to Shorten) on less than twenty-five (25) hours notice, *i.e.*, on September 21, 2021.

2. The Debtors seek to provide essentially one day of notice notwithstanding that the motion to which the Cross-Motion relates is noticed for October 5, 2021.

3. The Debtors offer two justifications for their request, both of which fail. *First*, the Debtors vaguely contend that the emergent relief is needed to “effectuate Debtors’ plan to refinance and repay the Lender” notwithstanding that the proposed financing is insufficient to repay Lender and there is a motion to dismiss pending also on October 5, 2021. *Second*, the

² The Lender is the assignee and successor-in-interest to the original lender, Pender Capital Asset Based Lending Fund I, LP (“Pender”), under that certain Assignment of Mortgage and Other Recorded Loan Documents dated August 31, 2021 (“Assignment”). Unless expressly stated otherwise, references in this Motion to “Lender,” shall refer, collectively, to 710 Route 38 ABL I Holdings, LLC and Pender.

Debtors contend that the emergent relief is needed to prepare their schedules notwithstanding that they have sought an extension until October 28, 2021 to do just that. *See* D.I. 20.

4. Moreover, D.N.J. LBR 9013-2 does not provide a basis for shortening notice on a cross-motion; rather, it only references motions. That makes sense as a cross-motion is noticed for the same hearing as the motion to which it relates. One party should not be able to gain a tactical advantage over another by shortening notice on a related cross-motion.

5. The Debtors here seek such a tactical advantage by providing Lender with no notice or opportunity to meaningfully respond to the Cross-Motion and the many mischaracterizations and misguided rhetoric included therein.

6. As such, for all these reasons, Lender respectfully requests that the Application to Shorten be denied and the Cross-Motion be scheduled no earlier than October 5, 2021.

Dated: September 20, 2021

Respectfully submitted,

BENESCH, FRIEDLANDER, COPLAN
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